

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Romo Furniture Mfg. Corp. : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Year 1977. :

State of New York }
ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of August, 1984, he served the within notice of Decision by certified mail upon Romo Furniture Mfg. Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Romo Furniture Mfg. Corp.
3821 Boston Rd.
Bronx, NY 10469

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
9th day of August, 1984.

David Parchuck

William A. Hagedorn
Authorized to administer oaths
pursuant to Tax Law section 174

STATE TAX COMMISSION

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation
Franchise Tax under Article 9A of the Tax Law for :
the Year 1977.

State of New York }
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of August, 1984, he served the within notice of Decision by certified mail upon Frank P. Marino, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frank P. Marino
Marino, Chambers & Lou
175 Main St.
White Plains, NY 10601

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
9th day of August, 1984.

David Parcluck

Bonnie R. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

August 9, 1984

Romo Furniture Mfg. Corp.
3821 Boston Rd.
Bronx, NY 10469

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Frank P. Marino
Marino, Chambers & Lou
175 Main St.
White Plains, NY 10601
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROMO FURNITURE MANUFACTURING CORP.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9-A of the Tax Law for the Year 1977.	:	

Petitioner, Romo Furniture Manufacturing Corp., 3821 Boston Road, Bronx, New York 10469, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the year 1977 (File No. 29501).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 23, 1984 at 2:45 P.M., with additional information to be submitted by March 23, 1984. Petitioner appeared by Frank P. Marino, Esq. The Audit Division appeared by John P. Dugan, Esq. (Irving Atkins, Esq., of counsel).

ISSUE

Whether the Audit Division properly adjusted petitioner's corporation franchise tax by increasing its receipts and decreasing its expenses for the year 1977.

FINDINGS OF FACT

1. On March 14, 1980, as the result of a field audit, the Audit Division issued a Notice of Deficiency pursuant to Article 9-A of the Tax Law against petitioner, Romo Furniture Manufacturing Corp. ("Romo"), in the amount of

\$3,867.19 plus interest of \$657.42 and additional charge of \$193.36 for a total due of \$4,717.97 for the year ended December 31, 1977.¹

2. The Audit Division had conducted a multiple tax audit of petitioner and its owner, Salvatore LoCicero and his wife Nancy, involving sales and use taxes, corporation franchise tax and personal income tax. Following prehearing conferences, adjustments to the deficiencies were agreed upon leaving in issue \$3,075.50 in corporation tax. Said amount arose from a cash availability shortage of \$31,102.00 as determined by the auditor.

3. On audit, the auditor found that Mr. and Mrs. LoCicero had purchased a home in 1977 and he asked the LoCiceros for documentation showing where the funds for the purchase had been obtained. Mr. LoCicero explained that the majority of the funds were received in the form of loans from Mrs. LoCicero's aunt and Mr. LoCicero's sister. The auditor would not accept this explanation and computed a \$31,102.00 cash availability shortage including \$29,375.00 in unreported funds used to purchase the house.

4. The LoCiceros purchased a home with a closing date of July 7, 1977. The purchase price was \$63,750.00 including the assumption of a first mortgage amounting to \$34,444.70. The remainder was to be paid in cash. In May the LoCiceros made a downpayment of \$6,375.00 upon signing the purchase contract. Mrs. LoCicero's aunt, Mrs. Cregan, gave petitioner the \$6,375.00 for the downpayment.

¹ In conjunction with the same field audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner Romo. That assessment has been resolved and paid and is not in issue. The Audit Division also issued a Notice of Deficiency against petitioner's owner, Salvatore LoCicero and his wife Nancy. A hearing on said deficiency was held in conjunction with the instant matter and a separate decision issued herewith.

In July, Mrs. Cregan gave Mrs. LoCicero another \$7,000.00 toward payment due upon closing. Mrs. LoCicero combined the \$7,000.00 with a \$9,948.61 withdrawal from her own savings account to obtain a bank check for \$17,000.00 which was due at closing. Additionally, Mr. LoCicero's sister, Anna LoCicero, loaned the LoCiceros \$6,000.00 which she delivered in the form of a check from her savings bank. The loans from Mrs. Cregan, therefore, totalled \$13,375.00 for the purchase not \$23,000.00 as originally determined by the Audit Division. The remaining amounts came from the LoCiceros' savings account and a loan from Anna LoCicero.

5. The loans from Mrs. Cregan were very informal in nature. She had been assisting the LoCiceros and their children with loans and gifts for a number of years. It is apparent that Mrs. Cregan did not expect them to repay the loans until they were in better financial condition. Mrs. Cregan stated that, "They are like my son and daughter . . . I am always helping them all the time . . . What am I going to do with it? I might as well do some good with it." In fact, subsequent to the period in issue, Mrs. Cregan, sold her own house and gave the LoCiceros \$32,000.00 from the proceeds as a gift for which she filed a Federal gift tax return.

6. The Audit Division questioned the source of the loans and gifts made by Mrs. Cregan since withdrawals from her savings accounts did not amount to the total of gifts and loans received by the LoCiceros. In her testimony, Mrs. Cregan explained that when she was a child, her father had lost all his money in the bank during the Great Depression. She, therefore, had a fear of banks for many years and, as a result, kept large amounts of money in a safe deposit box. It was only recently that Mrs. Cregan's accountant was able to

convince her to put some of her money into interest-bearing accounts and certificates of deposit. Therefore, most of the money Mrs. Cregan gave to the LoCiceros came from her safe deposit box and would not have been recorded as a bank transaction.

7. In addition to the \$29,375.00 from various sources used to purchase the house, the LoCiceros also had rental income of \$1,050.00 and \$2,100.00 from their furniture business which was not taken into account by the Audit Division. The total of all these amounts is \$32,525.00 which approximates the \$31,102.00 cash availability shortage for corporation franchise tax purchases.

CONCLUSIONS OF LAW

A. That section 1089(e) of Article 27 of the Tax Law provides that "[i]n any case before the tax commission under this article, the burden of proof shall be upon the petitioner" with exceptions not relevant herein.

B. That petitioner has met its burden of proving the availability of the funds used to purchase the LoCiceros' house. Petitioner showed that, of the approximately \$29,000.00 in cash needed to purchase the home, \$9,948.61 came from the LoCiceros' own savings, \$13,375.00 came from loans from Mrs. Cregan and \$6,000.00 came from a loan from Anna LoCicero. Moreover, petitioner showed that an additional \$2,100.00 came from the business and \$1,050.00 came from rental income. These amounts satisfactorily explain the cash availability shortage which was the only amount remaining in issue inasmuch as all other amounts have either been paid or resolved.

C. That the petition of Romo Furniture Manufacturing Corp. is granted and the Notice of Deficiency issued March 14, 1980 is cancelled.

DATED: ALBANY, NEW YORK

AUG 09 1984

STATE TAX COMMISSION

Roderick A. Clu
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. Della
COMMISSIONER